

SENATE BILL REPORT

SHB 1049

As of March 22, 2019

Title: An act relating to health care provider and health care facility whistleblower protections.

Brief Description: Concerning health care provider and health care facility whistleblower protections.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Macri, Stokesbary, Riccelli, Jinkins, Tharinger, Slatter, Caldier, Appleton, Wylie, Cody, Doglio and Stonier).

Brief History: Passed House: 3/07/19, 97-0.

Committee Activity: Health & Long Term Care: 3/22/19.

Brief Summary of Bill

- Provides a civil remedy to nonemployee whistleblowers at health care facilities who have been subject to retaliatory action.
- Establishes standards for the sanction process against medical staff.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: Greg Attanasio (786-7410)

Background: The identity of all whistleblowers who complain, in good faith, to the Department of Health (DOH) about improper quality of care by a health care provider or health care facility is confidential. Whistleblower protections include confidentiality and freedom from workplace reprisals. Only whistleblowers who are employees of that health care facility have recourse when the facility or a provider takes retaliatory action.

If an employee believes the health care provider or health care facility subjected them to workplace reprisal or retaliatory action, the employee must first file a complaint with the Washington Human Rights Commission (commission) within two years of the action. The commission must investigate the allegations and produce a written finding of fact. If the commission finds the employer engaged in retaliatory action, it will pursue an agreement between the parties to eliminate the unfair practice and if no agreement can be reached, the

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commission must appoint an administrative law judge (ALJ) to hear the complaint. The ALJ may require the restoration of benefits, back pay, or any other remedy.

Hospitals maintain a quality improvement program that includes a medical staff privileges sanction procedure through which professional conduct is reviewed as part of an evaluation of staff privileges of health care providers.

Summary of Bill: Whistleblower protection is expanded to include a whistleblower who initiates in good faith any investigation or administrative proceeding about a complaint made to DOH.

A nonemployee whistleblower who is subjected to reprisal or retaliatory action by a health care provider or health care facility may file a civil cause of action within two years of the retaliatory action. The nonemployee may recover damages and reasonable attorney's fees and costs, as well as enjoin further violations. A respondent may be awarded attorney's fees for unfounded and frivolous claims by a nonemployee whistleblower.

Absent the adherence to a medical staff privilege sanction process, any reduction of medical staff membership or privileges qualifies as a reprisal or retaliatory action.

A professional peer review action taken by a health care facility must meet the federal standards for professional review actions.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The nature of the health care delivery system has changed over time and not all providers are employees of a facility where they deliver care. Whistleblowing can be dangerous because retaliation is common and can ruin careers. The bill will help allow physicians to help create safer environments for patients by reporting quality of care issues without fear of reprisal.

OTHER: The bill is a good first step, but should also protect family members of patients.

Persons Testifying: PRO: Representative Nicole Macri, Prime Sponsor; Katie Kolan, Washington State Medical Association; Rex Johnson, Washington Advocates for Patient Safety; Ken Lee, Ken P. Lee MD; Kay Funk MD.

OTHER: Michael Brunson, citizen.

Persons Signed In To Testify But Not Testifying: No one.